

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

United States of America,

Plaintiff,

v.

Sharett Annette Yazzie,

Defendant.

Case No. 2:22-mj-00557-BNW

ORDER

Before the Court is Defendant's Motion to Dismiss Count Three of her Indictment. ECF No. 22. Defendant argues that Count Three should be dismissed because the regulation which she allegedly violated, 36 C.F.R. § 1.5(f), was created through an unconstitutional delegation of legislative power, 54 U.S.C. § 100101(a). *Id.* The Government opposed, and Defendant replied. ECF Nos. 29, 31. The Court finds that 54 U.S.C. § 100101(a) is not an unconstitutional delegation power. As a result, Defendant's motion is denied.

I. Analysis

The Constitution states that "all legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const., Art. I, § 1. This nondelegation doctrine has been interpreted to mean that "Congress generally cannot delegate its legislative power to another Branch." *Mistretta v. United States*, 488 U.S. 361, 372 (1989). However, the Supreme Court has recognized that Congress cannot perform its job without "an ability to delegate power under

1 broad general directives.” *Id.* If Congress defines an intelligible principle within the statute, “such
2 legislative action is not a forbidden delegation of legislative power.” *Id.*

3 The first step in deciding whether a statute violates the nondelegation doctrine is to
4 interpret the meaning of the statute. *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019). Once a
5 court has defined the statute’s meaning, it can then decide “whether the law sufficiently guides
6 executive discretion.” *Id.* If Congress creates a statute which delegates power *and* sets forth
7 guiding principles for the use of that power, it does not violate the nondelegation doctrine.
8 *Mistretta*, 488 U.S., at 372. In determining the meaning of a statute, a court may consider “the
9 text, alongside its context, purpose, and history.” *Gundy*, 139 S. Ct., at 2123. The Court in *Gundy*
10 notes that, at times, interpretation of the statute alone may answer the question of constitutionality
11 as well. *Id.*

12 Here, Defendant argues that 54 U.S.C. § 100101(a) is an unconstitutional delegation of
13 legislative power. ECF No. 22. This statute allowed for the creation of 36 C.F.R. § 1.5(f), which
14 Defendant is charged with violating. *Id.* The text of 54 U.S.C. § 100101(a) provides:
15

16
17 **(a) In general.** The Secretary, acting through the Director of the National Park
18 Service, shall promote and regulate the use of the National Park System by
19 means and measures that conform to the fundamental purpose of the System
20 units, which purpose is to conserve the scenery, natural and historic objects,
21 and wild life in the System units and to provide for the enjoyment of the
22 scenery, natural and historic objects, and wild life in such manner and by
23 such means as will leave them unimpaired for the enjoyment of future
24 generations.

25 The Court must first interpret the meaning of this statute and then subsequently decide
26 whether it contains an intelligible principle.

27 **A. The meaning of 54 U.S.C. § 100101(a) is for the Secretary of the Interior to create
28 regulations which conserve the National Park System.**

Courts have previously interpreted statutes like 54 U.S.C. § 100101(a) and determined
that these statutes were constitutional delegations of power. *Nat’l Rifle Asso. v. Potter*, 628 F.

1 Supp. 903, 905 (1986). In *Nat'l Rifle Asso.*, the statute at issue was 16 U.S.C. § 3. *Id.* That statute
2 provided, in part, power to the Secretary to “make and publish such rules and regulations as he
3 may deem necessary and proper for the use and management of the parks.” *Id.* The Secretary used
4 his authority under 16 U.S.C. § 3 to ban hunting and trapping in park areas where that activity
5 was previously unrestricted. *Id.* That statute was also part of a larger series of statutes constituting
6 the “Organic Act.” *Id.* After considering the legislative history and other context surrounding the
7 Act, the Court’s interpretation was that the Secretary was within his discretion to prohibit hunting
8 and trapping within the National Park System. *Id.* at 912. Though *Nat'l Rifle Asso.* focuses
9 primarily on whether the Secretary was within his discretion to create these regulations, the
10 analysis of the statute’s meaning and purpose is still relevant to the issue at hand.
11

12 Here, 54 U.S.C. § 100101(a) similarly authorizes the Secretary of the Interior to “promote
13 and regulate the use of the National Park System by means and measures that conform to the
14 fundamental purpose of the System units.” The statute then goes on to state that the fundamental
15 purpose is to “conserve the scenery, natural and historic objects, and wildlife” within national
16 parks, and to allow for the enjoyment of those things for future generations. *Id.* It would appear,
17 then, that the meaning of the statute is straightforward: the Secretary is allowed to create
18 regulations which preserve the state of the National Park System so as to ensure that preservation
19 for years to come.
20

21 This interpretation supports the ability of the Secretary to promulgate 36 C.F.R. § 1.5(f),
22 which Defendant was charged with violating. Here, as in *Nat'l Rifle Asso.*, the Secretary was
23 within his discretion when he put forth a regulation which made it a crime to violate a closure.
24 This regulation limits public access to certain areas, which ultimately works toward the statute’s
25 stated purpose of conserving the scenery, natural and historic objects, and wildlife of the park.
26

27 **B. 54 U.S.C. § 100101(a) restricts the power delegated to the Secretary so that it may**
28 **only be used for a specific purpose.**

1 After determining the meaning of a statute, a court may then decide whether the
2 delegation of power within it is permissible. *Gundy*, 139 S. Ct., at 2123. Here, the Secretary was
3 permitted to create regulations which defined the use of the National Park System—so long as
4 those regulations furthered the overall purpose of the system. 54 U.S.C. § 100101(a). The statute
5 defines that purpose as conserving national parks for future enjoyment. By limiting the
6 Secretary’s delegated power to the purpose of conserving the National Park System, Congress has
7 sufficiently defined an intelligible principle within its statute. Therefore, 54 U.S.C. § 100101(a) is
8 not an unconstitutional delegation of legislative power.
9

10 Defendant argues that this statute provides no guidance for the use of legislative power
11 and “is so broad it fails to cabin the NPS in any meaningful way.” ECF No. 22. Defendant points
12 to *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) and *Panama Refining*
13 *Co. v. Ryan*, 293 U.S. 388 (1935) as similar examples of statutes which provided no intelligible
14 principle. *Id.* However, since these decisions, the Supreme Court has liberally construed the
15 standard for an intelligible principle and never again found a violation of the nondelegation
16 doctrine.
17

18 As the Government succinctly notes in its response:

19 For example, the Supreme Court has upheld the delegation of broad
20 conferrals of authority to regulate “in the public interest,” *National*
21 *Broadcasting Co. v. United States*, 319 U.S. 190 (1943), to set “fair and
22 equitable prices,” *Yakus v. United States*, 321 U.S. 422 (1944), to set “just
23 and reasonable rates,” *FPC v. Hope Natural Gas Co.*, 320 U.S. 591
24 (1944), and to issue air quality standards that are “requisite to protect the
25 public health.” *Whitman v. American Trucking Association*, 531 U.S. 457
26 (2001); *see also* *Mistretta*, 488 U.S. at 374-77 (upholding delegation to
27 the Sentencing Commission to promulgate then-binding Sentencing
28 Guidelines establishing the permissible sentences for federal crimes);
Touby, 500 U.S. at 165-67 (upholding delegation to the Attorney General
to designate controlled substances on a temporary basis, resulting in
criminal penalties for unauthorized manufacture, possession, or
distribution of such substances).


ECF No. 29.

1 In other words, common law has evolved to allow for broad Congressional delegations of
2 legislative power to administrative agencies—so long as there is *some* feasible guideline which
3 restricts that power. Defendant’s motion relies heavily on *Jarkesy*, a Fifth Circuit opinion which
4 found that Congress violated the nondelegation doctrine when it granted “exclusive authority and
5 absolute discretion” to the Securities and Exchange Commission. *Jarkesy v. SEC*, 34 F.4th 446,
6 462 (5th Cir. 2022). However, Defendant’s comparison of the power delegated to the SEC in
7 *Jarkesy* and the power delegated here is not a fair one. As *Jarkesy* notes, “a *total absence* of
8 guidance is impermissible under the Constitution.” *Id.* (emphasis added). On the other hand, 54
9 U.S.C. § 100101(a) does provide some guidance for the use of the delegated power—the power
10 must be used to further the purpose of the National Park System. Therefore, the statute here is not
11 an unconstitutional delegation of legislative power and Count Three of Defendant’s indictment
12 should not be dismissed on those grounds.
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14 **II. Conclusion**

15 **IT IS THEREFORE ORDERED** that Defendant’s Motion to Dismiss (ECF No. 22) is
16 **DENIED.**
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18 DATED: August 1, 2023

19 
20 BREND A WEKSLER
21 UNITED STATES MAGISTRATE JUDGE
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